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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 464.

JESSIE NORTON TORRENCE MAGOUN, APPELLANT,

vs.

ILLINOIS TRUST AND SAVINGS BANK, AS EXECUTOR
AND TRUSTEE UNDER THE LAST WILL AND TESTA-
MENT OF JOSEPH T. TORRENCE, DECEASED, AND
DANIEL H. KOCHERSPERGER, AS COUNTY TREAS-
URER AND EX OFFICIO COUNTY COLLECTOR OF THE
COUNTY OF COOK, ILLINOIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS

FILED SEPTEMBER 25, 1897.

(16,677.)

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BLEED THROUGH

(16,677.)

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1 Pleas in the circuit court of the United States for the northern district of Illinois, northern division, in chancery sitting, at the United States court-room, in the city of Chicago, in said district and division, before the Honorable John W. Showalter, circuit judge of the United States for the seventh judicial circuit, on Tuesday, the twenty-first day of September, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-second year.

S. W. BURNHAM, *Clerk.*

JESSIE NORTON TORRENCE MAGOUN

vs.

ILLINOIS TRUST AND SAVINGS BANK, as Executor and Trustee under the Last Will and Testament of Joseph T. Torrence, Deceased, and Daniel H. Kochersperger, as County Treasurer and *ex Officio* County Collector of the County of Cook, in the State of Illinois.

In Chancery.

Be it remembered that on this day, to wit, the twenty-first day of September, in the year of our Lord one thousand eight hundred and ninety-seven, came the complainant in said entitled cause, by her solicitors, and filed in the clerk's office of said court her bill of complaint; which said bill of complaint is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States of America for the Northern District of Illinois, Northern Division. In Chancery.

To the honorable the judges of said court, in chancery sitting:

Your orator, Jessie Norton Torrence Magoun, brings this her bill of complaint against The Illinois Trust and Savings Bank, as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, and Daniel H. Kochersperger, as county treasurer and *ex officio* county collector of Cook county, in the State of Illinois, and thereupon, humbly complaining, shows unto your honors:

First. That this is a suit of a civil nature in equity; that the amount in dispute, exclusive of interest and costs, exceeds the sum of five thousand dollars; that it is a controversy between citizens of different States, and arises under the Constitution and laws of the United States, and that your orator is without adequate relief in the premises except in a court of equity.

Second. That your orator is a citizen and resident of the State of New York, in the United States of America, and that her place of residence is Westbury, on Long island, in said State of New York.

3 Third. That said Illinois Trust and Savings Bank, the executor and trustee under the last will and testament of Joseph T. Torrence, deceased, as hereinafter averred, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen and resident of the county of Cook, in the State of Illinois, and that the principal office and place of business of said Illinois Trust and Savings Bank is in the city of Chicago, county of Cook and State of Illinois.

Fourth. That said Daniel H. Kochersperger, the county treasurer and *ex officio* county collector for Cook county, in the State of Illinois, is a citizen of the State of Illinois, in the United States of America, and that his residence is in the city of Chicago, county of Cook, in the State of Illinois.

Fifth. That said Joseph T. Torrence was in his lifetime and up to the time of his death a citizen and resident of the county of Cook, in the State of Illinois, and that, being a citizen and resident of said State of Illinois, said Joseph T. Torrence, on or about the thirty-first day of October, A. D. 1896, departed this life at Chicago, leaving a last will and testament and codicil thereto, both duly signed and attested, copies of which are hereto attached, marked respectively Exhibit A and Exhibit B, and made a part hereof, the same as if here set out in full.

4 Sixth. That in and by said will the said Joseph T. Torrence nominated and appointed said Illinois Trust and Savings Bank executor of and trustee under the said will.

Seventh. That said will and codicil were both duly proved and admitted to record in the probate court of said Cook county, in the State of Illinois, on the fifth day of November, 1896; and thereupon, on the same day, letters testamentary on the said will and codicil were duly issued out of the said probate court to said Illinois Trust and Savings Bank, a copy of which letters is hereto attached, marked Exhibit "C," and made a part hereof, the same as if here set out in full, and said letters testamentary still remain in full force and unrevoked.

Eighth. That said Illinois Trust and Savings Bank accepted the trusts confided to and imposed upon it by the said will, codicil, and letters testamentary, and is now the duly qualified and acting executor of and trustee under the said last will and testament and has a charge and trust in the legacies or property for distribution under said will.

Ninth. That said estate is still pending, unsettled, and in process of administration in said probate court of Cook county.

Tenth. That your orator is the daughter of said Joseph T. Torrence, deceased, and the beneficiary named in the fourth article of said will and in the said codicil.

5 Eleventh. That said Joseph T. Torrence died seized and possessed of property which exceeded in value the sum of six hundred and twenty-five thousand dollars (\$625,000), all of which was at the time of his death and now is within the State of Illinois and all of which passed by said will and codicil.

Twelfth. That said estate is solvent and exceeds in value the

sum of six hundred thousand dollars (\$600,000) over and above all just claims and debts.

Thirteenth. That property which was of the said Joseph T. Torrence at the time of his death and was within the State of Illinois was of a clear market value of more than five hundred thousand dollars (\$500,000), and the beneficial interest therein and the income therefrom passed by said will to and for the use of your orator, a child of said Joseph T. Torrence, deceased, and that said property is still in the possession of said Illinois Trust and Savings Bank as executor of and trustee under the last will and testament of said Joseph T. Torrence, deceased, which executor and trustee has a charge and trust in the legacies and property of said estate for distribution under said will.

Fourteenth. That by the said last will and testament property of the value of one thousand dollars passed to and for the use of Mrs. James H. Torrence, widow of James H. Torrence, who was a brother of said Joseph T. Torrence, deceased.

Fifteenth. That prior to and at the time of his death the said Joseph T. Torrence was the owner and seized in fee-simple of the following-described premises, situated in the county of Cook and State of Illinois :

Lots 13, 14, 15, and 16, in James H. Fisk's subdivision of lots 60 and 61, in Ellis' addition to Chicago, being a part of the southeast quarter of section thirty-four and fractional section thirty-five, township thirty-nine north, range fourteen east, of the third principal meridian, and that said premises were and still are of the clear market value of thirty thousand dollars (\$30,000).

That said deceased was also at said time the owner and seized in fee-simple of—

(a.) Lots one (1) and two (2), in block two (2), in Potter Palmer's Lake Shore addition to Chicago.

(b.) Lot described as the north sixteen (16) feet and eight (8) inches of that part lying east of the west one hundred and thirty (130) feet and west of the Lake Shore drive of lot twenty-one (21), in Collins' subdivision of the south half of block seven (7), in the Canal Trustees' subdivision of the south fractional half of section three (3), township thirty-nine (39) north, range fourteen east, of the third principal meridian.

(c.) The east fourteen (14) feet and ten (10) inches of the north sixteen (16) feet and eight (8) inches of the east seventy (70) feet of the west one hundred and thirty (130) feet of lot twenty-one (21), in Collins' subdivision of the south half of block seven (7) of Canal

Trustees' subdivision of south fractional half of section three (3), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

(d.) The south twenty (20) feet of the north thirty-six and two-thirds ($36\frac{2}{3}$) feet of that part of lot twenty-one (21), in the subdivision of the south half of block seven (7), in the Canal Trustees' subdivision of the south fractional half of section three (3), township thirty-nine (39) north, range fourteen east, of the third principal meridian,

lying east of the west one hundred and thirty (130) feet thereof and west of the Lake Shore drive.

That said premises described under "a," "b," "c," and "d" above comprised the homestead estate of said deceased, and are situate at the southwest corner of Bellvue place and the Lake Shore drive, in the city of Chicago, which premises were and still are of the clear market value of two hundred and twenty-five thousand dollars (\$225,000.)

That said deceased was also the owner and in possession of the goods and chattels within said premises, which goods and chattels were and are of the clear market value of one hundred and twenty-five thousand dollars (\$125,000.00), and that the said deceased was also seized and possessed at the time of his death of other personal property of the clear market value of two hundred and twenty-five thousand dollars, and that in and by his last will and testament the said Joseph T. Torrence, deceased, duly devised and bequeathed the aforesaid parcels of real estate, together with the goods and chattels thereon and therein situated and the said personal

8 property, to the said Illinois Trust and Savings Bank, as executor and trustee of his said last will and testament, subject to certain small legacies in said will set forth; to be held by said trustee for the use, benefit, and behoof of your orator upon certain charges and trusts in said last will and testament set forth. All of said estate, real and personal, so devised by deceased to said executor and trustee is still held and owned by the said defendant executor and trustee upon said uses, charges, and trusts.

Sixteenth. That said Daniel H. Kochersperger is county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, and claims as such that all the property which passed, as aforesaid, to and for the use of your orator and the said property which passed, as aforesaid, to and for the use of Mrs. James H. Torrence is all subject to a tax under an act of the legislature of the State of Illinois or statute of the State of Illinois entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same," approved June 15, A. D. 1895, and claimed as such by said Daniel H. Kochersperger as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, to be in force on and since July 1, A. D. 1895.

That said Daniel H. Kochersperger, as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, claims that your orator as such beneficiary, devisee, and legatee and the said Illinois Trust and Savings Bank as executor and trustee under the last will and testament of said Joseph T. Torrence, deceased, are liable for a tax on said property which passed to and for the use of your orator, as aforesaid, under the said act or statute of the State of Illinois.

That said Daniel H. Kochersperger, as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, claims that the said Mrs. James H. Torrence, as such legatee, and said Illinois Trust and Savings Bank, as executor of and trustee under the last will and testament of said Joseph T. Torrence,

deceased, are liable under said act or statute of the State of Illinois for a tax upon said property which passed to and for the use of the said Mrs. James H. Torrence.

Seventeenth. That said Daniel H. Kochersperger, as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, claims that the amount of the alleged tax due under said act or statute from your orator and the said Illinois Trust and Savings Bank, as executor of and trustee under the last will and testament of said Joseph T. Torrence, deceased, upon the said property which passed to and for the use of your orator as aforesaid exceeds the sum of five thousand dollars (\$5,000), to wit, that it is the sum of six thousand dollars (\$6,000), and that the alleged tax due from said Mrs. James H. Torrence and the said Illinois Trust and Savings Bank, as executor of and trustee
10 under the last will and testament of said Joseph T. Torrence, deceased, upon the said property which passed to and for the use of said Mrs. James H. Torrence amounts to the sum of thirty dollars (\$30.00).

Eighteenth. That the said tax so alleged to be collectible under the said statute from the said estate has not been paid, and that said executor and trustee has up to the present time neglected to pay the same, and that the said Daniel H. Kochersperger, as county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, has duly demanded payment of said tax by and from said defendant, Illinois Trust and Savings Bank.

Nineteenth. And your orator further alleges that she has duly requested the defendant executor and trustee to omit and refuse to pay and to refrain from paying the said tax, and to contest the constitutionality of said act, and to refrain from paying the said tax voluntarily without protest, and to await the commencement of legal proceedings as in said statute provided, but that said defendant executor and trustee has refused and still refuses to comply with your orator's request, and has threatened and stated its intention of omitting to comply therewith, and has threatened and stated its intention and determination and is about to comply with all and singular the provisions of said act and statute and to pay said tax voluntarily without protest; that such payment of said alleged tax by said defendant executor and trustee in case the same
11 should be made voluntarily cannot be recovered if said law should be hereafter declared unconstitutional, and said payment would result in waste of said estate and a breach of trust on the part of said executor and trustee, and your orator would thereby suffer irreparable loss and injury.

Twentieth. That the tax under the said act or statute of the State of Illinois creates a lien upon each and every of the lots or parcels of real estate and upon all of said personal property so devised for the benefit of your orator, as aforesaid, and *coulds* the title thereto and makes the same unmarketable and depreciates the value thereof and prevents a sale of each and all of said parcels of real estate, to the great and irreparable damage and injury of your orator.

Twenty-first. That said act or statute if enforced, as fully appears

by reference thereto, will abridge the privileges and immunities of your orator as a citizen of the United States; that the enforcement of said act or statute will deprive your orator of her property without due process of law and will deny to your orator the equal protection of the laws; that said act or statute is unconstitutional, null, and void, because it is in conflict with and in violation of the provisions of the fourteenth article of amendment to the Constitution of the United States of America and other provisions of said Constitution.

Twenty-second. That said Daniel H. Kochersperger, county treasurer and *ex officio* county collector for the county of Cook, in the

12 State of Illinois, has been advised that your orator has requested the defendant executor and trustee to refrain from paying said tax voluntarily, and said defendant has been requested not to collect the same, but to cause to be instituted the proceedings contemplated and provided in said statute, but that said Daniel H. Kochersperger, county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, refuses to comply with your orator's request, and has declined to take or cause to be taken any legal proceedings under said act, and has stated that he would prefer that a suit to enjoin him from collecting the tax be forthwith instituted, to the end that in the public interest the legal point involved as to the constitutionality under the Constitution of the United States should be promptly adjudicated in this or some similar proceeding.

Twenty-third. That the said Daniel H. Kochersperger, as county treasurer and *ex officio* county collector for the county of Cook and State of Illinois, is not entitled to collect or receive and the said Illinois Trust and Savings Bank, as executor of and trustee under the last will and testament of said Joseph T. Torrence, deceased, should not pay any such tax upon or for the property which passed as aforesaid to and for the use of your orator, and that said Illinois Trust and Savings Bank, as executor of and trustee under the last will and testament of said Joseph T. Torrence, deceased, should be enjoined and restrained from voluntarily paying any such tax upon

13 or for the property which passed as aforesaid to and for the use of your orator, and said Daniel H. Kochersperger, county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, should be restrained by this honorable court from collecting or receiving any such tax upon or for the said property, and the cloud of said alleged tax lien on said premises should be removed therefrom by the order of this honorable court.

Twenty-fourth. Your orator further shows that this suit is not a collusive one to confer upon the circuit court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

Forasmuch, therefore, as your orator is without remedy in the premises except in a court of equity, and to the end, therefore, that the said Illinois Trust and Savings Bank, as executor of and trustee under the last will and testament of said Joseph T. Torrence, deceased, and Daniel H. Kochersperger, as county treasurer and *ex*

officio county collector for the county of Cook, in the State of Illinois, may fully answer this bill (but not under oath, the oath being waived); that a hearing hereof may be speedily had and a decree passed enjoining and restraining the said Illinois Trust and Savings Bank, as executor of and trustee under the last will and testament of said Joseph T. Torrence, deceased, from paying any such tax, and the said Daniel H. Kochersperger, as county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, from collecting or receiving said alleged tax under said act or statute upon or for the property which passed to and for the use of your orator, as aforesaid; that the cloud of said alleged tax lien on

14 such other, further, and different relief in the premises as equity may require and to your honors may seem meet—

May it please the court to grant the writ of summons in chancery, directed to the marshal of said district, commanding him to summon the said defendants to appear before this honorable court on the first day of the next term thereof, etc.

May it please the court also to grant the writ of injunction, directed to the said defendants, enjoining and restraining them respectively as aforesaid, and likewise enjoining and restraining them during the pendency of this action.

And your orator will ever pray, etc.

JESSE NORTON TORRENCE MAGOUN,
By PRUSSING & McCULLOCH, *Her Solicitors*.

(Endorsed :) Filed September 21, 1897. S. W. Burnham, clerk.

On the same day, to wit, the 21st day of September, 1897, there was filed in the clerk's office of said court Exhibits "A," "B," and "C" to the bill of complaint in said cause; which said Exhibits "A," "B," and "C" are respectively in the words and figures following, to wit:

15 EXHIBIT A.

I, Joseph T. Torrence, of # 88 Bellevue place, in the city of Chicago and State of Illinois, being in good bodily health and of sound and disposing mind and memory, do make, publish and declare this as and for my last will and testament, hereby revoking and annulling all other wills and codicils to wills heretofore made by me.

First.

I hereby appoint the Illinois Trust and Savings Bank executor of and trustee under this will.

Second.

I hereby direct that as soon as may be after my death all my just debts and funeral expenses be paid.

Third.

In addition to the financial assistance heretofore rendered them, I direct that there shall be paid to my brother Frank Torrence of Bement, Piatt county, Illinois, one thousand dollars (\$1,000.); to Mrs. James H. Torrence, widow of my late brother James H. Torrence, one thousand dollars (\$1,000.); to my sisters, Mrs. Elizabeth Gulleford, wife of William Gulleford of Millmine Station, Piatt county, Illinois, and Mrs. Eliza Gulleford, wife of Charles Gulleford of Warren, Trumbull county, Ohio, each one thousand dollars (\$1,000.), and to my nephew David Torrence of Latham, Logan county, Illinois, two hundred and fifty dollars. (\$250.00).

Fourth.

All the rest, residue and remainder of my estate, real personal and mixed of whatsoever kind and wheresoever situate
 16 whether now owned or hereafter acquired, of which I may die seized, possessed or entitled to in fee-simple, equity, expectancy or remainder, I hereby give, grant, devise and bequeath unto my said executor as trustee, to be paid to, received, held and disposed of by it, upon the following trusts and powers, to wit :

(1) To collect the income from the said residuary trust estate and to pay over to my daughter, Jesse Norton Torrence Magoun, until she shall have attained the age of thirty (30) years, so much of the net proceeds of said income which shall actually come into its hands (after paying the reasonable and proper costs of administering the trust) as she may desire, but not exceeding an average of forty thousand dollars (\$40,000.) per year, and to make such payments at such times and in such proportions in each year as she may request for her own use and behoof and upon her own receipt only, free and clear from any claim, demand or control of any husband she may have.

(2) Upon my daughter Jesse Norton Torrence Magoun arriving at the age of thirty (30) years, the principal of said residuary trust estate, together with any accretions thereto, shall — conveyed, transferred and delivered by my said trustee to her.

If my daughter, Jesse Norton Torrence Magoun shall die before reaching the age of thirty (30) years, the net income from said residuary trust estate or so much thereof as in the absolute discretion of my said trustee may be necessary for that purpose,
 17 shall be expended by or under the direction of said trustee, in the suitable maintenance, support and education of the child or children of my said daughter, Jesse Norton Torrence Magoun, until such child or the youngest surviving child, in case there have been more than one, shall have reached the full age of thirty (30) years, when the principal of said residuary trust estate, together with any accretions thereto shall be conveyed, transferred, and delivered by my said trustee, to such child or children, or to his, her or their surviving child or children *per stirpes* and not *per capita*.

(4) In case my said daughter, Jesse Norton Torrence Magoun shall die before reaching the age of thirty (30) years without leaving

a child or children surviving her, then it is my will and I hereby direct that the whole of said residuary trust estate including any and all accretions and additions thereto, shall forthwith vest and pass free, clear and discharged of and from any and all trust or other obligations of any kind or nature whatsoever, to my said brother and sisters and to the widow of my said brother, James H. Torrence, their surviving heirs in equal proportions, *per stirpes* and not *per capita*.

Fifth:

In the performance of its duties hereunder my executor and trustee is fully authorized and empowered in its absolute discretion to do and perform any and all acts and deeds, to execute, acknowledge and deliver any and all deeds, conveyances, leases, indentures, 18 agreements, contracts, undertakings, bonds, mortgages, discharges, receipts, acquittances, releases and any and all other documents, instruments and papers whatever, which may in its absolute discretion be considered to be necessary, proper or convenient to effectuate or carry into effect, the intent and purposes of this will, or any part thereof, or any business or transaction growing out of or connected therewith.

And it is hereby fully authorized and empowered in its absolute discretion to sell any or all of the property belonging to the estate, real, personal or mixed, at public or private sale, and to deliver and give good title to the same.

And in its respective capacities aforesaid, it is hereby specifically authorized and empowered in its absolute discretion to sell or exchange, and to deliver any and all real estate, and interest in real estate, and all certificates representing shares of stock, all stocks, bonds, notes and other securities, obligations or evidence of debt belonging to my general estate, or to said residuary trust estate, and to receive the price or proceeds thereof and in its absolute discretion from time to time to invest, change and reinvest the same.

The purpose of this article of this will, is to give to my said executor and trustee, in either or both said capacities as full and complete power and authority, in its absolute discretion in the performance of its respective duties hereunder, as I had over my property and estate when living.

19

Sixth.

In case of resignation, removal, disability or refusal to act of the Illinois Trust and Savings Bank, as executor and trustee of this will, any party in interest hereunder may apply to any court of competent jurisdiction for the appointment of a successor, executor or trustee, but it is my will that such vacancy shall be filled only by the appointment of a reputable and responsible trust company, authorized to accept and perform the duties hereinbefore prescribed for said executor and trustee.

In witness whereof I have hereunto set my hand and seal at the

city of Chicago, Illinois, this seventeenth day of February, A. D. 1896.

JOSEPH T. TORRENCE.

Signed, sealed, published, and declared as and for his last will and testament by the above-named testator, Joseph T. Torrence, in our presence, who, in his presence and in the presence of each other and at his request, have hereunto subscribed our names as attesting witnesses the day and year last above written.

MARSHALL LAPHAM.
JAMES J. REYNOLDS.
BERTHA DUPPLER.
FRED MATES.
THOMAS W. JOHNSTONE.
J. D. SPRINGER.

20

EXHIBIT B.

First Codicil.

The first subdivision of the fourth provision in the foregoing will is hereby modified and changed by adding at the end thereof the following, to wit:

But in case the net income for any year shall be insufficient to enable the payment of more than twenty thousand dollars (\$20,000.) for that year, to my said daughter, then and in that case the said trustee is hereby authorized and directed to sell sufficient of the property of the said residuary trust estate to enable the payment of and to pay my said daughter for that year, with the net income applicable thereto and aggregate amount of twenty-five thousand dollars.

In witness whereof, I have hereunto set my hand and seal at the city of Chicago, Illinois, this seventeenth day of February, A. D. 1896.

JOSEPH T. TORRENCE.

Signed, sealed and published, and declared as and for the first codicil to his last will and testament therein mentioned by the above-named testator, Joseph T. Torrence, in our presence, who, in his presence and in the presence of each other and at his request, have hereunto subscribed our names as attesting witnesses the day and year last above written.

MARSHALL LAPHAM.
JAMES J. REYNOLDS.
BERTHA DUPPLER.
FRED MATES.
THOMAS W. JOHNSTONE.
J. D. SPRINGER.

21

EXHIBIT C.

STATE OF ILLINOIS, }
 County of Cook, } ^{ss} :

The People of the State of Illinois to all to whom these presents shall come, Greeting :

Know ye that whereas Joseph T. Torrence, late of the county of Cook and State of Illinois, died on or about the 31st day of Oct., A. D. 1896, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State which may be lost, destroyed, or diminished in value if speedy care be not taken of the same; and inasmuch as it appears that Illinois Trust and Savings Bank has been appointed executor in and by the said last will and testament to execute the same and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize it, the said Illinois Trust & Savings Bank, as such executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Joseph T. Torrence at the time of his decease in whosoever hands or possession the same may be found in this State and well and truly to perform and fulfill all such duties as may be enjoined upon it by the said will so far as there shall be property and the law charge it, and in general to do

22 and perform all other acts which now or hereafter may be required of it by law.

Witness Abijah O. Cooper, clerk of the probate court of said county of Cook, and the seal of said court, this 5th day of [L. s.] Nov., A. D. 1896.

ABIJAH O. COOPER, *Clerk*.

(Endorsed :) Filed September 21, 1897. S. W. Burnham, clerk.

On the same day, to wit, the 21st day of September, 1897, came the Illinois Trust and Savings Bank, by its solicitors, and filed in the clerk's office of said court its answer to the bill of complaint; which said answer is in the words and figures following, to wit :

23 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } 88 :

In the Circuit Court of the United States of America for the Northern District of Illinois, Northern Division. In Chancery.

JESSIE NORTON TORRENCE MAGOUN

vs.

ILLINOIS TRUST AND SAVINGS BANK, as Executor and Trustee }
 under the Last Will and Testament of Joseph T. Torrence, De- }
 ceased, and Daniel H. Kochersperger, as County Treasurer and }
ex Officio County Collector of Cook County, in the State of }
 Illinois. }

The answer of the Illinois Trust and Savings Bank, as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, to said complainant's bill of complaint.

This defendant, for answer unto said bill of complaint, admits the allegations of fact therein contained in paragraphs first to twentieth, both inclusive, and paragraphs twenty-second and twenty-fourth.

Further answering, it says it does not know, and therefore cannot say, whether the allegations contained in paragraphs twenty-first

24 and twenty-third of said bill of complaint are true or not, but it says that the same are allegations of law, and it submits the same to the decision of this Honorable court, and prays to be advised of its rights and duties in the premises as executor and trustee aforesaid and as an officer of this court.

And, having now fully answered, it prays to be hence dismissed with its costs, etc.

ILLINOIS TRUST AND SAVINGS BANK,

As Executor and Trustee under the Last Will and

Testament of Joseph T. Torrence, Deceased,

By JAMES C. HUTCHINS, *Its Solicitor.*

(Endorsed :) Filed September 21, 1897. S. W. Burnham, clerk.

On the same day, to wit, the 21st day of September, 1897, came Daniel H. Kochersperger, county treasurer and *ex officio* collector of the county of Cook, by his solicitors, and filed in the clerk's office of said court his answer to the bill of complaint in said entitled cause; which said answer is in the words and figures following, to wit:

25 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States of America for the Northern District of Illinois, Northern Division. In Chancery.

JESSIE NORTON TORRENCE MAGOUN

vs.

THE ILLINOIS TRUST & SAVINGS BANK, as Executor and Trustee }
under the Last Will and Testament of Joseph T. Torrence, De- }
ceased, and Daniel H. Kochersperger, as County Treasurer and }
ex Officio County Collector for the County of Cook, in the State }
of Illinois. }

The answer of Daniel H. Kochersperger, country treasurer and *ex officio* collector of the county of Cook, in the State of Illinois, defendant, to the bill of complaint of Jessie Norton Torrence Magoun.

This defendant, now and at all times hereafter saving and reserv-
ing unto himself all benefit and advantage of exception which can
or may be had or taken to the many errors, uncertainties, and other
imperfections in the said bill contained, for answer thereunto or to
so much and such parts thereof as this defendant is advised it is or
are material or necessary for him to make answer unto, answering,
says :

26 This defendant admits that this is a suit in equity ; that
the amount in dispute, exclusive of interest and costs, exceeds
the sum of \$5,000; that complainant is a citizen and resident
of the State of New York, in the United States of America ; that the
defendant The Illinois Trust & Savings Bank, the executor and
trustee under the last will and testament of Joseph T. Torrence,
deceased, is a corporation duly organized and existing under and
by virtue of the laws of the State of Illinois ; that the principal
office and place of business of said Illinois Trust and Savings Bank
is in the city of Chicago, county of Cook and State of Illinois ; that
this defendant, Daniel H. Kochersperger, the county treasurer and
ex officio county collector of the county of Cook, in the State of
Illinois, is a citizen of the State of Illinois, in the United States of
America, and that his residence is in the city of Chicago, county of
Cook, in the State of Illinois ; that said Joseph T. Torrence was in
his lifetime and up to the time of his death a citizen and resident
of the county of Cook, in the State of Illinois, and that said Joseph
T. Torrence on or about the 31st day of October, 1896, departed this
life at Chicago, in the State of Illinois, leaving a last will and
codicil thereto, both duly signed and attested, as in complainant's
bill alleged ; that in and by said will the said Joseph T. Torrence
nominated and appointed said Illinois Trust and Savings Bank ex-
ecutor and trustee under said will ; that said will and codicil thereto
were both duly approved and admitted to record in the probate
court of said Cook county, in the State of Illinois, on the 5th day of
November, 1896, and that on the same day letters testamentary on

the said will and codicil were duly issued out of said probate court to said Illinois Trust & Savings Bank, and that said letters
27 testamentary still remain in full force and unrevoked; that said Illinois Trust & Savings Bank accepted the trust confided to and imposed upon it by said will and codicil and letters testamentary, and, is now the duly qualified and acting executor and trustee under said last will and testament, and has a charge in trust in the legacies or property for distribution under said will; that said estate is still pending unsettled and in process of administration in the said probate court of Cook county; that the complainant, Jessie Norton Torrence Magoun, is the daughter of said Joseph T. Torrence, deceased, and the beneficiary named in said will and in said codicil.

And this defendant, further answering, admits that said Joseph T. Torrence died seized and possessed of property which exceeded in value the sum of six hundred and twenty-five thousand dollars, \$625,000.00, all of which was at the time of his death and now is within the State of Illinois and all of which passed by said will and codicil; that said estate is solvent and exceeds in value the sum of six hundred thousand dollars (\$600,000) over and above all just claims and debts.

And this defendant, further answering, admits that the property which was of the said Joseph T. Torrence at the time of his death and was within the State of Illinois was of a clear market value of more than five hundred thousand dollars (\$500,000), and that the beneficial interest therein and the income therefrom passed by said will to and for the use of the complainant, a child of said Joseph

T. Torrence, deceased, and that said property is in the pos-
28 session of said Illinois Trust & Savings Bank, as executor and trustee under the last will and testament of said Joseph T. Torrence, deceased, which executor and trustee has a charge and trust in the legacies and property of said estate for distribution under said will, as in complainant's bill averred; that by said last will and testament property of the value of one thousand (\$1,000) dollars passed to and for the use of Mrs. James H. Torrence, widow of James H. Torrence, a brother of said Joseph T. Torrence, deceased.

And this defendant, further answering, says that he has never heard or been informed, save by the complainant's said bill, whether the said Joseph T. Torrence was the owner in fee-simple of the lands and premises situated in Cook county and State of Illinois, described and set out in paragraph 15 of said bill, but as to said lands, premises, and property this defendant believes that the said Joseph T. Torrence was at the time of his death the owner and seized of the said premises and property, and that the said premises and property are not of a less clear market value as in said bill alleged, and that by his last will and testament said Joseph T. Torrence duly devised and bequeathed the said parcels of real estate and the said personal property to the said Illinois Trust & Savings Bank, as executor and trustee of his said last will and testament, subject to certain small legacies in said will set forth to be held for the use,

benefit, and behoof of the complainant, upon certain charges and trusts in said last will set forth, and that all of said estate, real and personal, so devised to said executor and trustee is still held and owned by said executor and trustee upon and for said uses, charges, and trusts, as in said bill alleged.

29 And this defendant, further answering, admits that he, the said Daniel H. Kochersperger, is the county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, and claims as such that all the property which passed, as aforesaid, to and for the use of the complainant and the said property which passed, as aforesaid, to and for the use of Mrs. James H. Torrence is all subject to a tax according to the provisions and under an act of the legislature of the State of Illinois or statute of the State of Illinois entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same, approved June 15, A. D. 1895," and that as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, he still claims and avers that the said statute of the State of Illinois entitled as aforesaid *to be* in force now and since July 1st, A. D. 1895.

And this defendant further admits that as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, he claims that the complainant as such beneficiary and legatee and the said Illinois Trust & Savings Bank as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, are liable under said act or statute of the State of Illinois for a tax upon the right of succession of the said complainant to the said property which passed to and for the use of the complainant, as aforesaid, but denies that said act imposes a tax on said property

30 and avers the fact to be that said act imposes a tax upon the right of succession of the complainant to said property, and that Mrs. James H. Torrence as such legatee and the said Illinois Trust and Savings Bank as executor under said last will and testament of said Joseph T. Torrence, deceased, are liable for a tax upon the right of succession of said Mrs. James H. Torrence to said property which passed to or for her use under said act or statute of the State of Illinois, but denies that said act imposes a tax upon said property and avers the fact to be that said act imposes a tax upon the right of succession of Mrs. James H. Torrence to said property.

And this defendant further admits that as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, he claims that the amount of tax due under said act or statute from the complainant and the said Illinois Trust & Savings Bank, as executor and trustee, upon the right of succession to the said property which passed to and for the use of the complainant, exceeds the sum of five thousand (\$5,000) dollars, and that he believes it is the sum of six thousand (\$6,000) dollars, and that the said tax due from Mrs. James H. Torrence and the said Illinois Trust and Savings Bank, as executor and trustee, upon the right of succession to the said property which passed to and for the use of Mrs. James H.

Torrence, amounts to the sum of thirty (\$30.00) dollars, but denies that five or six thousand (\$5,000 or \$6,000) dollars in complainant's bill alleged is a tax upon the property which passed to the complainant, and denies that the sum of thirty (\$30.00) dollars
31 in complainant's bill alleged is a tax upon the property which passed to and for the use of Mrs. James H. Torrence, but avers that the said tax is a tax upon the right of succession of the said parties respectively and not upon the property.

And this defendant, further answering, admits that the said tax is collectable under the said statute from the said estate, has not been paid, and that the said executor and trustee has up to the present time neglected to pay the same, and that he, this defendant, as county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, has duly demanded payment of said tax by and from the said Illinois Trust & Savings Bank.

And this defendant, further answering, says that he is not informed, save by the complainant's bill, whether the complainant has requested the defendant The Illinois Trust & Savings Bank, executor and trustee, to omit and to refuse to pay and refrain from paying the said tax, and to contest the constitutionality of said act and to refrain from paying said tax voluntarily without protest, and to await the commencement of legal proceedings as in said bill provided, but this defendant believes that the complainant has so requested the defendant The Illinois Trust & Savings Bank, as in said bill is alleged.

And this defendant admits that the said Illinois Trust & Savings Bank, executor and trustee, is about to comply with all and singular the provisions of said act and statute of the State of Illinois, and to pay said tax voluntarily, without protest, but this defendant denies that said payment so made by said executor and trustee would result in the waste of said estate and a breach of trust on the part of said trustee, and denies that thereby the com-
32 plainant would suffer irreparable loss and injury.

And this defendant, further answering, admits that the tax under the said act or statute of the State of Illinois creates a lien upon each and every of the lands or parcels of real estate and upon all said personal property so devised for the benefit of the complainant as aforesaid, but this defendant denies that the said tax depreciates the value thereof, and denies that it prevents the sale of each and all of said parcels of real estate, to the great and irreparable damage and injury of the complainant.

And this defendant, further answering, denies that the said act or statute if enforced will abridge the privileges and immunities of the complainant as a citizen of the United States, and denies that the enforcement of said act or statute will deprive the complainant of her property without due process of law, and denies that the enforcement of said act or statute will deprive the complainant of the equal protection of the laws.

And this defendant denies that the said act or statute is in conflict with and in violation of the 14th amendment to the Constitution of the United States of America or any other of the provisions of said Constitution.

And this defendant, further answering, denies that the said act or statute of the State of Illinois entitled "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same, approved June 15, A. D. 1895," is unconstitutional, null,

and void because of any of the reasons in complainant's bill set out or because of any other reason whatever, but alleges the contrary to be true, and avers that the said act or statute is a valid and constitutional law or statute of the State of Illinois, and that as such valid statute it should and ought to be enforced.

This defendant, further answering, denies that as such county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, he is not entitled to collect and receive, and that said Illinois Trust & Savings Bank, as executor and trustee under the last will and testament of said Joseph T. Torrence, deceased, should not pay, any such tax upon or for the property which passed as aforesaid to and for the use of complainant, but alleges the contrary to be true, and avers that as county treasurer and *ex officio* county collector of said county of Cook, in the State of Illinois, — is entitled to collect and receive, and that the said Illinois Trust & Savings Bank, as executor and trustee under the last will and testament of said Joseph T. Torrence, deceased, should pay, said tax under and according to the provisions of said act or statute of the State of Illinois upon the right of succession to the property which passed to and for the use of the complainant, as in said complainant's bill alleged, and this defendant denies that the said Illinois Trust & Savings Bank, as such executor and trustee, should be enjoined and restrained from voluntarily paying the said tax, and denies that the said Daniel H. Kochersperger, county treasurer and *ex officio* county collector of the county of Cook, in the State of Illinois, should be restrained from collecting or receiving said tax.

34 And this defendant denies that said tax lien upon said premises is a cloud upon the complainant's title, but avers that the same is a valid and subsisting lien.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as though he had pleaded or demurred to said bill, and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL H. KOCHERSPERGER,
County Treasurer and ex Officio County Collector
of Cook County,

By ROBERT S. ILES &
FRANK L. SHEPARD,
His Solicitors.

ROBERT S. ILES,
County Attorney,
FRANK L. SHEPARD,
Ass't County Attorney, Solicitors for said Defendant.
EDWARD C. AKIN,
Attorney General State of Illinois, of Counsel.

(Endorsed :) Filed September 21, 1897. S. W. Burnham, clerk.

35 And on the same day, to wit, the twenty-first day of September, in the July term of said court, 1897, in the record of proceedings thereof in said entitled cause, before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit :

Entry.

JESSIE NORTON TORRENCE MAGOUN

vs.

ILLINOIS TRUST AND SAVINGS BANK, as Executors and Trustees under the Last Will and Testament of Joseph T. Torrence, Deceased, and Daniel H. Kochersperger, as County Treasurer and <i>ex Officio</i> County Collector of the County of Cook, in the State of Illinois.	}	24631.
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Now, on this day, come the parties, by their solicitors, and by agreement this cause is set down for hearing on bill and answer, and the court, having fully considered the same and being now fully advised, finds that said bill should be dismissed for want of equity. It is thereupon ordered, adjudged, and decreed that said bill be, and the same is hereby, dismissed for want of equity at the costs of the complainant, and that execution issue therefor.

And now comes the complainant, by her solicitors, and files her petition for appeal to the Supreme Court of the United States, together with her assignment or errors, as required by the rules of said Supreme Court. It is thereupon ordered that said appeal be allowed upon the complainant entering into bond in the sum of five hundred dollars (\$500), with security to be approved by the court; and thereupon the complainant presents her bond to the court in the penalty of five hundred dollars, conditioned as the law directs; which bond is now approved by the court and ordered to be filed.

36 And on the twenty-first day of September, 1897, came the complainant in said entitled cause, by her solicitors, and filed in the clerk's office of said court her petition for appeal and assignment of errors; which said petition and assignment of errors are in words and figures following, to wit :

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States of America for the Northern
 District of Illinois, Northern Division. In Chancery.

JESSIE NORTON TORRENCE MAGOUN

vs.

ILLINOIS TRUST AND SAVINGS BANK, as Executor
 and Trustee under the Last Will and Testament
 of Joseph T. Torrence, Deceased, and Daniel H.
 Kochersperger, as County Treasurer and *ex Officio*
 County Collector of the County of Cook, in the
 State of Illinois. } Gen'l No., —.
 Term No., —.

Petition for Appeal and Assignment of Errors.

The complainant, Jessie Norton Torrence Magoun, prays an appeal to the Supreme Court of the United States from the decree and order of his honor Judge Showalter, dismissing the bill of complaint herein for want of equity, entered the twenty-first day of September, A. D. 1897, and assigns the following reasons for appeal:

37 First. That the court erred in dismissing the said bill of complaint.

Second. That the court erred in holding that the act of the legislature of the State of Illinois entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same" is valid.

Third. That the court erred in not deciding that the State of Illinois by the said act or statute deprived the complainant of property without due process of law.

Fourth. That the court erred in deciding that the said act or statute affords the equal protection of the laws to persons within the jurisdiction of the State of Illinois.

Fifth. That the court erred in deciding that the State of Illinois by the said act or statute has not denied and does not deny to persons within its jurisdiction the equal protection of the laws.

Sixth. That the court erred in not deciding that the said act or statute deprives the complainant of property without due process of law.

Seventh. That the court erred in not deciding that the said act or statute denies to complainant, who is a citizen of the United States, the equal protection of the laws.

38 Eighth. That the court erred in not deciding that the said act or statute abridges the privileges of complainant, who is a citizen of the United States and of New York.

Ninth. That the court erred in not deciding that the said act or statute abridges the immunities of the complainant, who is a citizen of the United States and of New York.

Tenth. That the court erred in not deciding that the said act or statute is repugnant to, in conflict with, and in violation of the provisions of the fourteenth article of amendment- to the Constitution of the United States of America.

Eleventh. That the court erred in not granting the relief prayed for in the said bill of complaint.

Twelfth. That the court erred in not deciding that the said act or statute is repugnant to, in conflict with, and in violation of other provisions of the Constitution of the United States of America.

Thirteenth. That the court erred in that said decree dismissing the said bill of complaint for want of equity is contrary to law and said decree is repugnant to, in conflict with, and in violation of the provisions of the Constitution of the United States of America.

JESSIE NORTON TORRENCE MAGOUN,
By PRUSSING & McCULLOCH, *Her Solicitors*.

(Endorsed :) Filed September 21, 1897. S. W. Burnham, clerk.

39 Know all men by these presents that we, Jessie Norton Torrence Magoun, as principal, and Eugene E. Prussing, as sureties, are held and firmly bound unto Illinois Trust and Savings Bank, as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, and Daniel H. Kochersperger, as county treasurer and *ex officio* county collector of Cook county, Illinois, in the full and just sum of five hundred dollars, to be paid to the said bank and Kochersperger, their successors and certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of September, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the circuit court of the United States in & for the northern district of Illinois, northern division, in a suit depending in said court between said Jessie Norton Torrence Magoun, as complainant, and said bank and Kochersperger, as defendants, a decree was rendered against the said Magoun, and the said Magoun having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said bank and Kochersperger, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Magoun shall prosecute said appeal to effect and answer all damages

and costs if she fail to make her plea good, then the obligation to be void; else to remain in full force and virtue.

JESSIE NORTON TORRENCE MAGOUN, [SEAL.]
By EUGENE E. PRUSSING, *Her Att'y-in-fact.* [SEAL.]
EUGENE E. PRUSSING. [SEAL.]

Sealed and delivered in presence of—
GEO. W. KEMP, *Witness.*

Approved by—
H. JOHN W. SHOWALTER,
Circuit Judge.

(Endorsed :) Filed Sept. 21, 1897. S. W. Burnham, clerk.

40 *Clerk's Certificate.*

NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein Jessie Norton Torrence Magoun is the complainant and The Illinois Trust and Savings Bank, as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, and Daniel H. Kochersperger, as county treasurer and *ex officio* county collector for the county of Cook, in the State of Illinois, are the defendants, as the same appear from the original records and files of said court now remaining in my custody and control.

Seal of Circuit Court
U. S., Northern Dist.
Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 22nd day of September, 1897.

S. W. BURNHAM, *Clerk.*

41 UNITED STATES OF AMERICA, ss:

To Illinois Trust and Savings Bank, as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, and Daniel H. Kochersperger, as county treasurer and *ex officio* county collector of the county of Cook, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal — of the United States circuit court of the northern district of Illinois, wherein Jessie Norton Torrence Magoun is appellant and you are appellee — and you are defendant in error, to show cause, if any there be, why the decree rendered against the said appellant, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Showalter, circuit judge, this twenty-first day of September, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN W. SHOWALTER,
Circuit Judge.

42 The undersigned hereby accept service of the within citation and the delivery of a true copy thereof.

JAMES C. HUTCHINS,
*Sol'r for Illinois Trust & Savings Bank, as Ex'r & Trustee
under the Last Will & Testament of Jos. T. Torrence, Dec'd.*

DANIEL H. KOCHERSPERGER,
*County Treasurer & ex Officio County Collector
of Cook County, State of Illinois,*

By ROBERT S. ILES, *His Solicitor.*

Sep. 21, '97.

Endorsed on cover: Case No. 16,677. N. Illinois C. C. U. S. Term No., 464. Jessie Norton Torrence Magoun, appellant, vs. Illinois Trust and Savings Bank, as executor and trustee under the last will and testament of Joseph T. Torrence, deceased, and Daniel H. Kochersperger, as county treasurer and *ex officio* county collector of the county of Cook, Illinois. Filed September 25, 1897.